**IN TH HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL APPEAL NO. 51 OF 2005**

State of Goa. ... Appellant

versus

1. Smt. Usha Chawan,
   R/o near D'Souza Bar
   Re-light area, Baina Vasco,
   Native of Mumbai.

2. Smt. Papa Joga,
   R/o near Vasant Mahal Hotel,
   Yellur, Dist. Krishna, A.P.

3. India Veera Venkata
   Satyanarayan, Murthy @
   Kunthu Raju,
   R/o D. No. 35141,
   Montissori School Street,
   32nd Ward, Tanaku Town West,
   Godawari, A.P.

4. One unknown lady(absconding) ... Respondents

Ms. Winnie Coutinho, Public Prosecutor for the State/Appellant.

Mr. Arun Bras De Sa, Advocate for the Respondents.

**CORAM : N. A. BRITTO, J.**

**DATE : 10TH NOVEMBER, 2006.**

**ORAL JUDGMENT**

This is a State's appeal against the acquittal of the accused under Sections 366-A, 372 and 373 I.P.C. and Sections 4, 5 and 6 of the Immoral Traffic(Prevention) Act, 1956 vide Judgment dated 7-8-2004 of the learned Assistant Sessions Judge, Margao.

2. The case of the prosecution, was that three months prior to 25-8-2003 in the red light area at Baina, Vasco-da-Gama, A-2/Smt. Papa Joga, wife of Narayan Rao Joga sold her minor daughter Miss K. Rani(CW1) for the purpose of prostitution to A-3/Indala Veera Venkata Satyanarayan Murti @ Kunth Raju knowing that her minor daughter would be forced into prostitution and A-3/Indala Veera Venkata Satyanarayan Murti @ Kunth Raju dispatched the said Miss K. Rani to A-1/U. Chavan(who bought the said minor Miss K. Rani) to the red light area at Baina, Vasco-da-Gama through one known lady namely A-4, who remained unknown, as she was not arrested nor prosecuted and who had brought the said minor Miss K. Rani under the pretext of providing a job as maid servant and

compelled her into prostitution and the accused made a living at the earnings of prostitution of the said victim girl Miss K. Rani.

3. It appears that on 25-8-2003 the said Miss K. Rani came before an organization known as ARZ having their Office in the red light area at Baina, Vasco-da-Gama and reported to them that she was forced into prostitution and the case came to be investigated upon a letter written by the said ARZ on the same day to the Police Inspector, Vasco Police Station.

4. In the course of the trial, the prosecution examined about 14 witnesses out of which about 5 witnesses were declared hostile and cross-examined by the prosecution.

5. As far as the offences under Sections 366-A, 372 and 373 I.P.C. are concerned the learned trial Court has come to the conclusion that the said victim Miss K. Rani was not a minor but a major. This conclusion was arrived at by the learned trial Court by placing reliance on the Birth Certificate issued by the Government of Andhra Pradesh which was a public document and on which the date of birth was shown as

20-12-1984. The learned trial Court did not rely upon the medical evidence regarding the age of the said victim and that was done by placing reliance on the case of Paramjit Singh v. State of Himachal Pradesh(1987 CRI. L. J. 1266). The margin of error in cases of determination of age by radiological test is two years on either side. In fact, the findings of the learned trial Court as regards the determination of the age of the victim Miss K. Rani has not been assailed by the prosecution in this appeal and consequently the acquittal of the accused under Sections 366-A, 372 and 373 I.P.C.

6. The main grievance of the prosecution is that the application filed by the prosecution to examine the said Miss K. Rani by videoconferencing was rejected by the trial Court and therefore for a fair trial, it is necessary that the appeal should be allowed and the case remanded for re-trial so that the prosecution has an opportunity to examine the said Miss K. Rani and two others namely CW20/Salma and CW21/Jyoti. As far as this aspect of the case is concerned, it appears that at the relevant time the said K. Rani, Jyoti and Salma, who were initially at the protective home at Merces were handed over to

Prajwala at Hyderabad and the latter Institution on receipt of summons to the said three victims had filed an application before the trial Court on 9-8-2004 and which was subsequently disposed of by the learned trial Court vide Order dated 18-6-2004. The said application dated 9-6-2004 apparently was not even filed by the prosecution but by the said Prajwala and it was only countersigned by the learned Public Prosecutor. It was not the case of the prosecution in the said application that videoconferencing facility was available at Prajwala in Hyderabad and they could have provided such facility before the trial Court to make the examination of the witnesses by videoconferencing possible. What was stated in the said application was that videoconferencing facilities could be arranged by giving appropriate directions to the General Manager, VSNL, Goa or to any agency who makes videoconferencing facility available. The said application dated 9-6-2004 does not show whether the Investigation Officer or for that matter the Public Prosecutor appearing in the case had shown any interest of their own to make such facility available so that the said three victims could be examined while they were at Hyderabad. The learned trial Court disposed of the case vide

Judgment dated 7-8-2004 and after the case was disposed of that the prosecution belatedly filed an application before this Court being Criminal Revision Application No.23/2004 which was dismissed as infructuous on 13-1-2005 with liberty to agitate the point involved in the appeal to be filed against the acquittal.

7. The learned trial Court in its Order dated 18-6-2004 had observed that the letter dated 4-2-2004 of Prajwala had indicated that Jyoti and Salma were gainfully employed and nothing prevented the said Prajwala to secure their presence for the examination before the trial Court. The learned trial Court had also observed that the offences had taken place at Baina, Vasco-da-Gama and the trial was proceeding at Margao and therefore the victims and other witnesses had no cause of apprehending harassment or traumatizing at the hands of the accused. In fact, it appears that on behalf of the accused it was even stated, that the accused would be ready to record the evidence of the said witnesses in the absence of the accused. The learned trial Court therefore had rejected the plea of the prosecution to examine the said witnesses by videoconferencing or by appointing a Commission.

8. Thereafter, the learned trial Judge in the Judgment of acquittal, in para 13 has noted thus:-

> "Now coming to Sections 4, 5 and 6 of the Act, it is seen that in the instant case victim is not examined though she was very much available and traceable for examination, as rightly pointed out by the Advocate for the accused no.1. The custody of the victim was admittedly entrusted with Prajwala, Rehabilitation Centre by the Protective Home cum Reception Centre, Merces, Goa along with two other witnesses namely Salma and Jyoti. On issuance of summons Prajwala through their Advocate vis a vis P.P. filed application at Exh.52 for their examination by videoconferencing. The said application was rejected by its Order dated 18-6-2004. Thereafter opportunity was awarded to Prajwala and I.O. to secure their presence by giving sufficient time, records indicate so. However unfortunately their presence was not secured. Even opportunity was given to Prajwala/prosecution to prefer revision against the said order as prayed by them. Inspite of the same, the victim and the above two witnesses were not

produced, thus producing material and all vital evidence".

9. The learned trial Court has assessed the other evidence on record and has come to the conclusion that the same was insufficient to convict the accused under the provisions of I.T.P. Act, 1956. Rightly, the learned trial Court has observed that the evidence of Pandye/PW4 and Juliana/PW12, both from ARZ, as regards to what the victim Miss K. Rani had told them would be hearsay in the absence of examination of the said Miss K. Rani. No doubt, the Apex Court in the case of **State of Maharashtra** v. **Dr. Praful B. Dessai**((2003)4 SCC 601) has stated that recording of evidence by videoconferencing also satisfies the object of Section 273 of the Code of Criminal Procedure, 1973. The Supreme Court has stated that the accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact, the accused may be able to see the witness better than he may have been able to see if he was sitting in dock in a crowded courtroom. They can observe his or her demeanour. In fact, the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be

able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully meant by videoconferencing. Thus, no prejudice of whatsoever nature is caused to the accused.

10. As already noted from the facts stated herein above, it does not appear that the prosecution was ever seriously interested in getting the evidence of the said three victims recorded by videoconferencing. No seriousness was also shown in assailing the Order dated 18-6-2004 of the learned trial Court and the revision filed against it appears to be more out of a formality, to be withdrawn subsequently, as being infructuous. No evidence was produced before the learned trial Court that the prosecution was in a position to arrange videoconferencing facility at the trial Court for the witnesses to be examined from Hyderabad and even otherwise the said application appears to have been made not because the prosecution wanted it to be

made but because Ujwala had desired it to be made.

11. Considering the facts of the case, this is not a fit case for remand for retrial. The appeal therefore deserves to be dismissed for the conclusions arrived at by the learned trial Court, could not be faulted. Appeal dismissed.

**N. A. BRITTO, J.**

**RD**